

REMARKS

*Summary of the Amendment*

Upon entry of the above amendment, the specification and claims 2, 12, 16, 18, 20 and 23 will have been amended. Accordingly, claims 1-23 will be pending with claims 1, 12 and 18 being in independent form.

*Summary of the Official Action*

In the instant Office Action, the Examiner rejected claims 1-23 over the art of record. By the present amendment and remarks, Applicant submits that the rejections have been overcome, and respectfully requests reconsideration of the outstanding Office Action and allowance of the present application.

*Traversal of Rejection Under 35 U.S.C. §102(b)*

Applicant traverses the rejection of claims 1-13, 15-18 and 20-23 under 35 U.S.C. § 102(b) as being anticipated by US published patent application US 2002/0063299 to KAMATA et al.

The Examiner asserted that this document discloses or suggests all the features recited in these claims including a gate which overlaps a source and drain region 8. Applicant respectfully traverses this rejection.

Notwithstanding the Office Action assertions as to what KAMATA discloses, Applicant submits that KAMATA fails to disclose, or even suggest, for example, forming a gate at least partially overlapping at least one source/drain region (claim 1), or forming a first conductive region adjacent a side of the gate and separated from a gate dielectric arranged beneath the gate (claim 12), or a gate arranged to at least partially overlap at least one source/drain region (claim 18).

KAMATA apparently discloses a source/drain which extends beneath one or more layers (e.g., layers 5 and 6) which are arranged on the gate 3. However, it is clear from a fair reading of KAMATA that the gate 3 does not overlap any portion of the source/drain. To the contrary, each of the embodiments shown in the drawings of KAMATA illustrate a silicon oxide layer 2 preventing the source/drain region material from extending under the gate 3. The Examiner has not identified any language or figure in KAMATA which specifically discloses any overlap between the gate 3 and the source/drain region 8.

Applicant also acknowledges that KAMATA discloses a source/drain 8 having a first conductive region (i.e., the portion of the region 8 extending beneath layer 5) which is arguably arranged adjacent a side of the gate 3 (see e.g., Fig. 13). However, it is clear from a fair reading of KAMATA that this portion of the source/drain 8 is not separated from a gate dielectric (i.e., oxide layer 2) arranged beneath the gate 3. To the contrary, each of the embodiments shown in the drawings of KAMATA illustrate a source/drain 8

which extends to and/or makes contact with the oxide layer 2 arranged beneath the gate 3.

The Examiner has not identified any language or figure in KAMATA which specifically discloses any separation between the source/drain 8 and the gate dielectric and/or oxide layer 2 arranged beneath the gate 3.

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper reading of KAMATA.

Moreover, Applicant submits that dependent claims 2-11, 13, 15-17 and 20-23 are allowable at least for the reason that these claims depend from allowable base claims and because these claims recite additional features that further define the present invention.

In particular, Applicant submits that no proper reading of KAMATA discloses or even suggests, in combination, the features recited in claims 2-11 in combination with the features recited in claim 1, the features recited in claims 13 and 15-17 in combination with the features recited in claim 12, and the features recited in claims 20-23 in combination with the features recited in claim 18.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 102(b).

***Traversal of Rejection Under 35 U.S.C. § 103(a)***

Applicant respectfully traverses the rejection of claims 14 and 19 under 35 U.S.C.

§ 103(a) as unpatentable over KAMATA alone.

The Examiner acknowledged that KAMATA lacks, among other things, the height dimensions recited in these claims. However, the Examiner asserted that such dimensions “are variables of the art which one of ordinary skill in the art would have been able to determine.” Applicant respectfully disagrees with the Examiner’s assertions and traverses this rejection.

Notwithstanding the Examiner’s assertion as to what KAMATA discloses or suggests, Applicant submits that in addition to failing to anticipate the invention recited in amended independent claims 12 and 18, KAMATA also fails to teach or suggest the invention recited in at least the independent claims 12 and 18.

Applicant respectfully submits that the recited dimension values, in combination with the other features recited in claims 12 and 18, would not have been obvious to one having ordinary skill in the art and, furthermore, the recited dimensions constitute an aspect of the invention which is not merely a matter of design as evidenced by Figs. 14 and 15 of the instant application and the description of Figs. 14 and 15 in paragraphs [0037] – [0039] of the specification.

Applicant directs the Examiner’s attention to the guidelines identified in M.P.E.P section 2141 which state that “[i]n determining the propriety of the Patent Office case for obviousness in the first instance, it is necessary to ascertain whether or not the reference

teachings would appear to be sufficient for one of ordinary skill in the relevant art having the reference before him to make the proposed substitution, combination, or other modification." *In re Linter*, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

As this section clearly indicates, "[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992)."

Moreover, it has been legally established that "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) .... Although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so.' 916 F.2d at 682, 16 USPQ2d at 1432.). See also *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992) (flexible landscape edging device which is conformable to a ground surface of varying slope not suggested by combination of prior art references)."

Additionally, it has been held that "[a] statement that modifications of the prior art

to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the claimed invention was made' because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993)."

Moreover, Applicant submits that there is no motivation to modify KAMATA in a manner which would render obvious Applicant's invention, and additionally, Applicant submits that there is no motivation or rationale disclosed or suggested in the prior art to modify the applied reference in the manner suggested by the Examiner. The Examiner's opinion does not provide a proper basis for these features or for the motivation to modify this document in the manner suggested by the Examiner. Therefore, Applicant submits that the invention as recited in at least independent claims 12 and 18 is not rendered obvious by any reasonable inspection and interpretation of the disclosure of the applied reference.

Furthermore, Applicant submits that dependent claims 14 and 19 are allowable at least for the reason that these claims depend from allowable base claims and because these claims recite additional features that further define the present invention. In particular, Applicant submits that no proper reading or modification of KAMATA

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discloses or suggests, in combination: the features recited in claim 14 in combination with the features recited in claim 12, and the features recited in claim 19 in combination with the features recited in claim 18.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 103(a).

### CONCLUSION

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious the Applicant's invention, as recited in each of the pending claims. The applied references of record have been discussed and distinguished, while significant claimed features of the present invention have been pointed out.

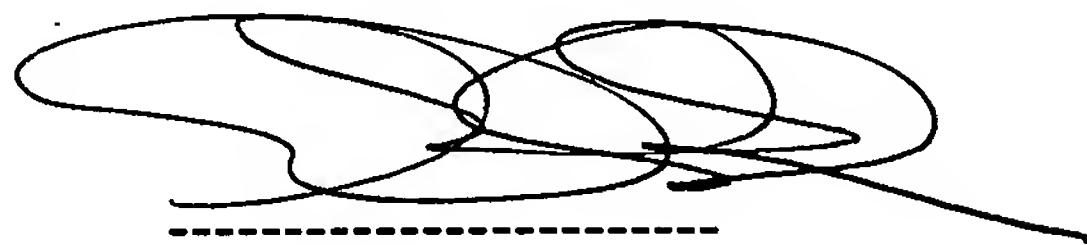
Further, any amendments to the claims which have been made in this response and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

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Authorization is hereby given to refund excess payments and charge any additional fee necessary to have this paper entered to Deposit Account No. 09-0458.

Respectfully submitted,  
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